

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

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W.P.No.31249 of 1998

Between

K.S.Phani Sayanam

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..Petitioner

AND

A.P. State Electricity Board represented by its ..Respondents
Secretary and another

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:: JUDGMENT ::

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Counsel for the petitioner

Sri P.Chakravarthy for
Sri O.Manohar Reddy

Counsel for respondents

Sri Samineni Kishore

19.12.2006

This is the second round of litigation forced upon the petitioner because of recalcitrant attitude adopted by the functionaries of the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board') in the matter of consideration of his candidature for appointment as Lower Division Clerk.

The petitioner, who is a Post-Graduate in Arts, worked as a contract employee with the Board from 1.2.1991 to 31.10.1996 and thereby, became entitled to be considered for appointment on the regular establishment of the Board in terms of the policy decision contained in B.P. (P&G Per) Ms.No.36 dated 18.5.1997. The qualification prescribed for the post of Lower Division Clerk in the Andhra Pradesh State Electricity Board Service Regulations (for short, 'the Service Regulations') framed under Section 79 (c) of Indian Electricity (Supply) Act, 1948 is degree in Arts, Science or Commerce of any University in India established or incorporated by or under a Central Act, Provincial Act or a State Act or any equivalent qualification.

The petitioner filed Writ Petition No.26790 of 1997 with the complaint that even though he was eligible to be considered for appointment in terms of B.P.Ms.No.36, dated 18-5-1997, the respondents have arbitrarily overlooked his candidature. The same was disposed of on 24.10.1997 with a direction to the respondents to consider his candidature for appointment as Lower Division Clerk.

In purported compliance of the direction given by the Court, Superintending Engineer (Operation Circle), Anantapur (respondent No.2) made a show of considering the candidature of the petitioner, but rejected the same on the ground that the qualification possessed by him is not sufficient to consider him for appointment as L.D.C./J.L.M. This is evinced from paragraph 3 (ii) of letter No.PO/Adm./S3/1888,

dated 16.9.1998 sent by respondent No.2 to the petitioner.

The petitioner has questioned the rejection of his candidature by contending that the same is contrary to the policy contained in B.P.Ms.No.36 dated 18.5.1997 which envisages filling up of 50 per cent of vacancies in the initial recruitment from among the members who worked as ex-casual labour, Village Electricity Workers and contract labour. He has averred that respondent No.2 illegally declared him ineligible despite the fact that he fulfils the qualifications prescribed under the Service Regulations.

In the counter affidavit filed by Sri B.S.Ramachandra Rao, Assistant Secretary (Legal) of the Board, it has been averred that the petitioner worked as contract labour up to 31.3.1996 and not up to 31.10.1996. It has been further averred that his candidature was not considered because he was not on the rolls on 18.5.1997. According to Sri B.S.Ramachandra Rao, in compliance of the direction given by the High Court in Writ Petition No.26790 of 1997, the petitioner was interviewed on 10.4.1998, but his candidature was not considered because he does not fall within the ambit of B.P.Ms.No.271 dated 31.12.1997, which postulates consideration of the candidature of only those contract labour, who were on the rolls on 18.5.1997.

I have heard the learned counsel for the parties and perused the record. In my opinion, the reason assigned by respondent No.2 for not considering the candidature of the petitioner smacks of arbitrariness and patent violation of his constitutional right guaranteed under Articles 14 and 16 of the Constitution of India. At the cost of repetition, I deem it proper to mention that the qualification prescribed for the post of Lower Division Clerk is only graduation in Arts, Sciences or Commerce whereas the petitioner is a post-graduate. It is, thus, evident that the officer concerned did not even bother to look into

the statutory regulation and the qualification possessed by the petitioner while declining to consider his candidature for the post of L.D.C.

Sri Samineni Kishore, learned counsel for the respondents made a valiant attempt to convince me that notwithstanding the untenability of the reason specified in communication dated 16.9.1998, the Court may sustain the decision of respondent No.2 because in terms of B.P.Ms.No.271 dated 31.12.1997 issued by the Board, only those persons who were working as contract labour as on 18.5.1997 were eligible to be considered for appointment.

I have considered the submission of the learned counsel, but have not felt impressed. B.P.Ms.No.36 dated 18.5.1997 issued by the Board does not contain a stipulation that only those persons would be considered for appointment against the 50% vacancies, who were on the rolls on 18.5.1997. This condition came to be incorporated for the first time in B.P.Ms.No.271, dated 31.12.1997 i.e., more than two months after the disposal of Writ Petition No.26790 of 1997 filed by the petitioner. Therefore, the said B.P.Ms. cannot be made the basis for sustaining the decision taken by respondent No.2 to reject the candidature of the petitioner on the ground of non-fulfilment of the qualification.

I am further of the view that the conditions specified in B.P.Ms.No.271 dated 31.12.1997 cannot be applied with retrospective effect so as to deprive a candidate like the petitioner for his right to be considered for appointment in terms of B.P.Ms.No.36 dated 18.5.1997 read with order dated 24.10.1997 passed by this Court in Writ Petition No.26790 of 1997.

For the reasons stated above, the writ petition is allowed. The rejection of the petitioner's candidature is declared illegal and

quashed. The respondents shall re-consider the petitioner's candidature for appointment as L.D.C. by treating him as eligible and pass appropriate order within one month from the date of receipt of certified copy of this order. The petitioner shall get costs of Rs.5,000/- from the respondents.

G.S.SINGHVI, CJ

19-12-2006

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